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ABSTRACT

The Federal Communications Commission (FCC) is far more anxious to promote the First Amendment premise that broadcasters should air controversial programming than it is worried about the occasional use of "four-letter words" by broadcasters. The FCC and Supreme Court decisions in the "Pacifica" case affect only the broadcasting of a series of offensive words as a "verbal shock treatment" and have no implications for the isolated use of potentially offensive words. The FCC should not act as a censor but should increase programming choices through fostering increased competition and more outlets for expression in electronic media. Its highest priority continues to be to encourage bold, innovative, and controversial programming, not to discourage it. It also has the goal of increasing the diversity of programming for such groups as children, minorities, women, and the aged. Finally, the FCC is committed to the principle that broadcasters have an obligation to air controversial issues. Broadcasters therefore should not allow the "Pacifica" case to lead to timidity in their coverage of controversial subjects. (GW)

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ADDRESS BY
CHARLES D. FERRIS
CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE
NEW ENGLAND BROADCASTING ASSOCIATION
BOSTON, MASSACHUSETTS
JULY 21, 1978 12:15 P.M.

As a New England native, I am happy you are the first regional broadcast group I have addressed. Given the phrase "banned in Boston," this is an appropriate place for me to confront the issue of potential FCC censorship of broadcast speech raised by the Supreme Court's recent Pacifica "seven dirty words" decision.

After the "seven dirty words" decision, when I speak to broadcasters, I recall the experience of Winston Churchill. He was once on a transatlantic tour, during which he was stopped and asked, "Mr. Churchill, doesn't it thrill you to know that every time you make a speech the hall is packed to overflowing?"

Churchill pondered and then admitted it of course was flattering. "But," he said, "I always remember that if I were being hanged, the crowd would be twice as big."

I sympathize with your concern about maintaining the independence of broadcast programming. Many people who write to us do seem to want to cast the FCC into the role of an arbiter of public morality.

When I was working on Capitol Hill, I recall a Member of Congress receiving a letter from a constituent who had read a warning by the

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Naval Observatory that there was going to be an eclipse of the sun that might hurt the eyes of people who watched it.

The constituent complained. What about the people who didn't read the warning, or who read and forgot it? If the eclipse is really harmful to vision, he wrote, "why is the Naval Observatory allowing it to take place?

We receive similar letters at the Federal Communications Commission.

At times I wish I could bring myself to use that famous form letter of H. L. Mencken, which read: "Dear Sir or Madam: You may be right." Period. "Sincerely."

I am glad to have the opportunity to share with you my own observations on the recent Supreme Court case--and to put that case in perspective. I do not want that case to lead to timidity in your coverage of controversial subjects. That is precisely the opposite of your principal duty as broadcasters, which is to air bold, diverse and even unpopular views. I also do not want the public to take this case as a signal to write to the government for relief whenever they hear a word they find personally offensive.

I want to dispel your anxiety surrounding the Court's decision. The decision itself affected only a very limited portion of a broadcaster's full potential for self-expression. But many commentators have prophesied that this is the beginning of the end of broadcasters' First Amendment rights.

Well, let me say I do not intend to devote my limited powers under the Communications Act to censoring speech. I do not intend to

become an arbiter of taste. I intend to follow the prime mandate of the Communications Act and the First Amendment, and to regulate in ways that increase the diversity of information and ideas available to the public.

A close look at the facts of the Pacifica case, and our narrow interpretation of it in a more recent case, show that the Commission can and will continue to focus on increasing rather than decreasing debate, discussion, and dramatization of controversial issues.

In the case decided two weeks ago the Supreme Court dealt with a 12-minute monologue by comedian George Carlin entitled "Filthy Words." This monologue was aired by radio station WBAI in New York City at two o'clock in the afternoon. It was composed of a sustained repetition of colloquial uses of--as Carlin put it--"words you couldn't say on the public airwaves."

The FCC, upon receiving a listener's complaint, did not attempt to take away WBAI's license. Nor did it attempt to levy a fine against the station. But it did state that the complaint was valid under a section of the Communications Act that prohibits broadcast of "indecent" material, and said it would "associate" it with the station's file.

And even this ruling has twice been narrowed and clarified.

First, recognizing that its decision might be given a broader reading than it intended, the Commission itself made clear soon after Pacifica that its ruling did not cover words broadcast in a live newscast or other live event. Broadcasters, the FCC noted, could not edit in such cases. And the Commission stressed that in its Pacifica ruling it had "never intended to place an absolute prohibition on the broadcast of this type of

language, but rather sought to channel it to times of the day when children most likely would not be exposed to it."

The Supreme Court again stressed the narrowness of the Commission's ruling just two weeks ago. It made clear that it did not find that "an occasional expletive...would justify any sanction."

Justice Powell, in a separate opinion, emphasized that this case involved a "repeated...verbal shock treatment," not "the isolated use of a potentially offensive word in the course of a radio broadcast." And Justice Brennan in dissent also found the ruling finely drawn, stating that "broadcasters are not now on notice that the Commission desires to regulate any offensive broadcast other than the type of 'verbal shock treatment' condemned here, or even this 'shock treatment' type of offensive broadcast during the late evening."

Finally, just yesterday the FCC voted to renew the license of WGBH-TV, the public television station here in Boston, in a decision that drew the line on complaints that might arise after the Pacifica case.

A viewer group had complained that WGBH had aired "obscenities," "profanity" and "vulgar" material in such programs as Masterpiece Theater and Monty Python's Flying Circus. In rejecting this complaint, the Commission stressed that the Supreme Court's decision did not extend to the occasional use of the words involved in the WBAI Carlin broadcast.

WGBH had aired one of the "seven words" twice in a program broadcast after 11:00 p.m. We made clear that at such late hours broadcasters may assume an adult audience.

WGBH also aired one of the words a single time in a play broadcast at 5:30 p.m. The Commission distinguished this from the "concentrated

and repeated assault" in Pacifica.

The particular set of circumstances in the Pacifica case is about as likely to occur again as Halley's Comet. Our WGBH decision should make clear that Pacifica really is limited.

It should show that the FCC is not going to become a censor. And hopefully it will prevent an outpouring of audience complaints based on occasional words.

Of course we will continue to get complaints. Many members of the public do feel strongly about issues of language on television and radio. But I hope that we--and you--can make them understand the greater risks of active government surveillance of broadcast content.

I must admit that, even having limited the Pacifica holding to its specific circumstances, I am still not comfortable with any governmental role in areas of taste. I might feel comfortable deciding for myself what are "accepted standards of morality," or what is "patently offensive" speech. But I do not feel comfortable making those decisions for others. I believe that we can better exercise our powers at the FCC to increase programming choices through fostering increased competition and more outlets for expression in electronic media.

The New York Times put it well when it said the Court's role--and I believe the Commission's role--is "not to search for reasonable definitions of the acceptable or orthodox but to diffuse the power of those who pretend to do the job. Let the many decide, and a few will offend the rest. But let a few decide, and the many are sure to be deprived. Censoring requires a censor. It is the ultimate orthodoxy of our democratic faith that no one is fit for the job."

I view the First Amendment to the Constitution as one of the greatest achievements of the human race, and as the essence of democracy. But the founding fathers who wrote it could not have envisioned the vast amplification of speech that broadcasting represents, where a single person can reach tens of millions in an instant.

As a result, there has been since broadcasting's early days a fundamental tension between the free speech rights of those licensed to use the broadcast medium and federal regulation of those licensees to promote First Amendment purposes.

Congress, the Commission, and the Courts have wrestled with this tension before. And they have consistently resolved it to require more, rather than less, controversial speech. To the extent that commentators read the Court's decision as a signal to the FCC to stifle nonconforming speech, reversing past precedent, I believe they are wrong.

The Commission's highest priority continues to be to encourage bold, innovative and controversial programming--not to discourage it. We do insure that broadcasters program to meet the First Amendment needs of the viewers and the listeners in their communities.

In a scarce medium of limited access, as Justice Brennan observed in Pacifica, the government does have a proper role in "increasing the diversity of speakers and speech." This has led the FCC to insist that broadcasters reach out to all segments of their communities--children, minorities, women, and the aged--and provide information to meet their needs.

It is this goal of expanding diversity that led the FCC to adopt, four years ago, policies designed to increase the amount and variety of children's programming. We will be reviewing that subject next week.

Behind the Pacifica case, of course, was the Commission's concern for the interests of children in television. I think it is more important for the FCC to focus its primary concern for children on expanding the range of programming available to them than on the infrequent risk that a child will hear an occasional word that parents would not deem acceptable.

The FCC has also required broadcasters to take affirmative action to increase their employment of women and minorities, and has sought to increase minority ownership of broadcast stations. We are trying to foster development of satellites, cable, fiber optics and other technologies that can offer the public a broader menu of electronic information. These are indirect methods of assuring diversity of speech, and may eventually make any direct content-related FCC rules unnecessary.

Finally, the Commission and the courts have consistently said that broadcasters have an affirmative obligation to air controversial issues. The Red Lion case empowers the Commission to take action to insure that the public receives the widest possible range of views, however unpopular, on issues affecting them.

The goal of the Fairness Doctrine, like the First Amendment, is not to restrict speech but to stimulate, as the Supreme Court said, "uninhibited, robust, wide open debate." Its effect is to protect nonconformist, minority views from private censorship.

As Judge Learned Hand wrote in 1943, "...right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be folly; but we have staked upon it our all."

This is the message I want most strongly to leave with you:

We at the FCC are far more dedicated to the First Amendment premise that
broadcasters should air controversial programming than we are worried
about an occasional four-letter word.

As the Commission said in another Pacifica case, in 1964:

We recognize, that...provocative programming...may offend some listeners. But this does not mean that those offended have the right, through the Commission's licensing power, to rule such programming off the airwaves. Were this the case, only the wholly inoffensive, the bland, could gain access to the radio microphone or TV cameras.

The FCC's commitment to this principle is not mere rhetoric. The Commission again made clear yesterday that it wants not to close the doors on robust speech, but to open them. We do so because your stations are the crucial conduits through which our society's vital current of information must flow.

We favor robust speech, not only in news and public affairs, but also in entertainment. For in the context of entertainment, broadcasting can and should inform and move its audience. At its best, broadcasting can present a unique statement on the human condition, or the need to rectify injustices, in both documentary and drama. "Holocaust" and "Harvest of Shame" spring from the same creative impulse.

I commit to you, and to the public I serve, to resist the temptations of censorship. I will continue to defend your right, and indeed your duty, to challenge accepted standards.

It would be a tragedy if broadcasters used the "seven dirty words" case to avoid controversy. For you to be safe--to only provide the conventional view--is not enough to serve the overall "public interest."

A great and courageous broadcast journalist, Edward R. Murrow, spoke eloquently about broadcasting's obligation to inform the nation in times of stress, whether the views it carried were popular or not.

Murrow once said: "The trouble with television"--and he could have been talking about radio as well--"is that it is like a sword rusting in its scabbard during a battle for survival."

As Chairman of the Federal Communications Commission, I promise you that if you draw the sword of controversial speech, you need not fear its cutting edge.

Thank you.